

BEFORE THE
BOARD OF TRUSTEES
FULLERTON SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

EVA ARREOLA and Other Certificated
Employees of the Fullerton School District,

Respondents.

OAH Case No. 2010030299

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 5, 2010, at Fullerton. Complainant Mark L. Douglas, Assistant Superintendent, Personnel Services, of the Fullerton School District was represented by David C. Larsen, Attorney at Law.

Respondents Pablo Diaz, Russell Harrison, and Derek Jaronczyk did not appear and were not represented at the hearing. The remaining respondents, as designated in Exhibit D, and each of them, were represented by Marianne Reinhold, Attorney at Law.¹

Oral, documentary, and stipulated evidence having been received and arguments heard, the Administrative Law Judge submitted this matter for decision on April 5, 2010, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 9, 2010, the Accusation was made and filed by Mark L. Douglas in his official capacity as Assistant Superintendent, Personnel Services, Fullerton School District, State of California (District).

¹ At the commencement of the hearing, respondents' counsel determined that she also represented respondents Ruben Reed and Dalila Tirado and these two respondents were added to the List of Certificated Employees represented by her law firm (Exh. D).

2. Respondents, and each of them, are employed by the District as permanent or probationary certificated employees.

3. The District is an elementary and middle school district that serves and educates approximately 13,600 students in Fullerton in Orange County. Due to the ongoing state budget crisis and its concomitant effect upon the District's budget, which has also been affected by a few years of declining enrollment and program encroachments, the Superintendent determined that the District must reduce expenditures by discontinuing particular kinds of services and laying off certificated personnel. The Assistant Superintendent of Business Services prepared a preliminary budget for the District based upon the Governor's Proposed Budget and determined that the District must reduce expenditures by \$11.2 to \$11.7 million for the next school year to ensure a balanced budget and the required three percent reserve.

4. (A) On February 23, 2010, in Resolution No. 09/10-12, pursuant to Education Code sections 44949 and 44955 and based upon recommendation of the Superintendent, the Board of Trustees of the District determined and resolved that the ongoing state budget crisis continued to have a negative impact on District revenue, that the District must eliminate programs and services for the 2010-2011 fiscal year to maintain a balanced budget and provide for essential services, and that it was necessary to reduce or discontinue particular kinds of services being rendered by certificated personnel for the 2010-2011 fiscal year by a total of 87.5 full-time equivalent (FTE) positions. The Board of Trustees directed the Superintendent and/or his designee to serve written notices upon certificated employees in accordance with and in the manner prescribed by Education Code sections 44955 and 44949 in order to reduce certificated positions by a number corresponding to the services reduced or discontinued and positions affected thereby. The Board of Trustees further resolved that the actual layoff of any employee would be subject to its final review and determination after appropriate hearings and deliberations.

(B) On February 23, 2010, in Resolution No. 09/10-12, the Board of Trustees also adopted a Determination of Seniority Among Certificated Employees with the Same Seniority Date, or a tie-breaker resolution, which set forth tiebreaking criteria to be used in determining the order of termination or layoff of certificated employees who first rendered paid service to the District on the same date or have the same first date of paid service.

5. On or about February 24, 2010, pursuant to Resolution No. 09/10-12 of the Board of Trustees and the provisions of Education Code sections 44949 and 44955, the District's Assistant Superintendent of Personnel Services as designee of the Superintendent gave written notices by personal service to respondents, and each of them, that the Superintendent had recommended and the Board of Trustees had resolved that their services will not be required for the ensuing 2010-2011 school year and the reasons for this action. Respondents were notified that their positions will be eliminated or filled by "regular" employees with more seniority pursuant to Education Code section 44955. The preliminary notices included Resolution No. 09/10-12 of the Board of Trustees to reduce and/or discontinue particular of services or programs performed by certificated employees in the

District, the list of particular certificated services or programs to be eliminated or reduced, the tie-breaking criteria, pertinent sections of the Education Code, and a blank Request for Hearing. Respondents, and each of them, timely requested a hearing to determine if there is cause for not re-employing them for the ensuing school year.

6. The District's preliminary notice of layoff dated February 24, 2010 (preliminary notice), was sufficient in providing notice to respondents under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors in the notices, if any, with respect to the description of their employment status, addresses, or any other matters. No claims were raised in the hearing that the preliminary notices or contents thereof were deficient in any respect.

7. On or about March 9, 2010, the District properly served respondents, and each of them, with an Accusation, Statement to Respondent, copies of Government Code sections 11507.5-11507.7, a blank Notice of Defense form, and Notice of Hearing. Except for certificated employees named in Finding 8 below, respondents filed timely notices of defenses, requesting a hearing to determine if there is cause not to employ them for the ensuing school year and objecting to the Accusation. All prehearing jurisdictional requirements have been met by the parties.

8. Respondents Pablo Diaz, Russell Harrison, and Derek Jaronczyk were properly served with the preliminary notice of layoff and the Accusation but did not file notices of defense or appear at the hearing. Said three respondents were deemed in default of this proceeding under Government Code section 11524. Complainant elected to proceed and to present evidence with respect to these three respondents pursuant to Government Code section 11520. No evidence was presented for or on behalf of these three respondents.

9. On February 23, 2010, pursuant to Resolution No. 09/10-12 and its findings, the Board of Trustees resolved and took action to reduce or discontinue certain services or programs offered by the District for the 2010-2011 school years in the following FTE positions:

<u>Administration</u>	<u>Full-Time Equivalent Positions</u>
Elementary Assistant Principal(s)	1.5
<u>Pupil Services</u>	
School Psychologists	3.0
School Counselor	1.0
School Nurse	1.0

Course Offerings/Instruction

Grades K – 6 Teacher Reduction	60.0
Foods/Sewing/Home Economics	3.0
Choir/Movement	2.0
Keyboarding/Business/Computer Applications	3.0
Mathematics	2.0
Science	2.0
Social Science	2.0
Language Arts	2.0
Physical Education	2.0
Art	3.0
Academic Counselor	1.0

The reduction or discontinuance of the services set forth hereinabove constitute a total of 88.5 full-time equivalent positions.

10. The services set forth in Finding 9 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Board of Trustees to reduce or discontinue these services is within its sound discretion and not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary in order for the District to maintain a balanced budget and sufficient reserves as well to provide essential services.

11. The District prepared and maintains a Seniority List (Exh. 7) which contains the names of certificated employees and their seniority dates or dates of first paid service, current assignments and site locations, FTE positions, employment status, and credentials and authorizations. The District asked certificated employees to file Verifications and Updates of Personnel Information and incorporated any information received and deemed valid onto the Seniority List. The District also complied and reviewed Job Descriptions (Exh. 6) of the services or positions that it was required to reduce or discontinue pursuant to the resolution of the Board of Trustees and applied the tiebreaking criteria to certificated employees who are affected by this layoff and first rendered paid service in a probationary position on the same dates beginning with the date of August 31, 2005, and ranked them in order of termination. The District developed flow charts of the least senior certificated employees currently assigned in the particular kinds of services that it is seeking to reduce in this layoff proceeding (Exh. 7). The District determined whether the least senior certificated employees hold credentials in other areas of service or teaching and are entitled to bump other employees and whether certain employees should be skipped and retained.

12. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services described in Finding 9 above and to terminate the employment of all respondents given preliminary notice and accusations by taking into account the personnel

changes and attrition due to reassignments, retirements, and/or resignations of individual certificated employees within the District. As set forth in the list of resignations and retirements (Ex. 9), there are three certificated employees who will or have resigned and 30 certificated employees who will or have retired from the District before the next school year. The District has reasonably determined and accounted for what will be positively assured attrition among its certificated staff for the ensuing 2010-2011 school year and reduced by corresponding number the number of certificated employees whose employment must be terminated due to the reduction or discontinuance of particular kinds of services. Consequently, the District has determined that 43 certificated employees must be laid off in this proceeding pursuant to the resolution to reduce or discontinue particular kinds of services.

13. (A) Thirty-three certificated employees have or will resign or retire from their employment with the District before the ensuing school year. Four are special education teachers and the District plans to replace three of them and to reassign Ivy Ninofranco to a special education position or service. Ninofranco is a fifth grade teacher with a seniority date of August 31, 2005, who has a preliminary credential or authorization in mild and moderate special education. Based on her preliminary credential, Ninofranco may be reassigned to special education by bumping a teacher in that service with less seniority.

(B) Debra Rosengarten is an assistant principal at Fisler Elementary School and has a first date of paid service with the District of January 4, 1993. In addition to a administrative services credential, Rosengarten has a clear multiple subject credential and is authorized and competent to teach at the elementary or middle school level. The District has determined that Rosengarten is entitled to bump a middle school teacher with less seniority and will reassign her to that position. As a result of this bumping, respondent Russell Harrison, an assistant principal at Richman Elementary School, becomes the least senior assistant principal subject to layoff pursuant to the reduction of assistant principals by 1.5 FTE.

(C) Sally Soriano is a counselor at Nicolas Junior High School. She has a seniority date of August 29, 2000, and holds a clear pupil personnel services credential and single subject credential in English. Based on her English credential, the District has determined that Soriano may bump a less senior English teacher at a middle school and will be retained.

(D) Lisamarie Florendo is a speech teacher at Maple Elementary School and, with a first date of paid service of August 27, 2009, is one of the most junior certificated employees of the District. She received a preliminary notice of layoff. However, in addition to her preliminary multiple subject credential, Florendo also has a waiver authorization in language and speech pathology. She is also working towards her credential in speech pathology. The District has determined to skip Florendo and retain her to provide speech services pursuant to her waiver authorization.

(E) Choir and movement are to be reduced by 2.0 FTE. Respondent Andrea Calvo is a music, movement, and choir teacher at Nicolas Junior High School and holds a preliminary single subject credential in music. Her seniority date is August 28, 2001. As the least senior of teachers in her service area, Calvo may be laid off pursuant to the reduction of choir and movement services. Melissa Martinez is a vocal music and physical education teacher at Parks Junior High School; she holds not only a dance and supplemental authorization in music but also a clear single subject credential in physical education. Because she holds a physical education credential, the District has determined that Martinez may bump a less senior teacher in physical education and will be reassigned into that position. With the layoff of Calvo and the reassignment of Martinez, the District has reduced choir and movement by 2.0 FTE. In addition, the District will be terminating a temporary choir and movement teacher who occupies a 0.5 FTE position, leaving the District with no teachers in choir and movement.

(F) Kyle Stava is a technology teacher at Fisler Elementary School. His seniority date is February 6, 1989. Jillian Nagler is a computer teacher at Ladera Vista Junior High School. Her seniority date is August 28, 2001. Because both Stava and Nagler hold a clear multiple subject credential, they are able to bump less senior teachers and are to be reassigned to teaching positions. Respondent Stephanie Wilmoth is a computer teacher at Parks Junior High School. She has a seniority date of January 26, 2004. Because she holds only a clear single subject credential in business and cannot be reassigned, Wilmoth is subject to be laid off pursuant to the reduction of keyboarding, business, and computer applications by 3.0 FTE.

(G) Respondents Kelley Crowley, Brandy Champlin, and Aaron Beaver are middle school art teachers, each of whom holds a single subject credential in art. Crowley, Champlin, and Beaver are the most junior of the District's four art teachers and may be terminated pursuant to the reduction of the art program by 3.0 FTE. Stacy Udkoff-Vetrovec with a seniority date of August 30, 1989, is the most senior of the four art teachers in the District and the District has determined to skip and retain her for the next school year.

Claims of Individual Respondents

14. (A) Respondent Allison Demonteverde is a certificated employee of the District who teaches a fifth grade elementary classroom and was served with a preliminary notice and Accusation as part of the reduction of elementary classroom teachers by 60 FTE. Demonteverde has a seniority date of August 31, 2005, along with a number of other certificated employees. During the hearing, the District determined that Demonteverde has additional certificates or credentials and, upon re-applying the tie-breaking criteria, determined that she is entitled to move up in the order of termination of certificated employees who have the same seniority date. Accordingly, Demonteverde was moved up in the order of termination to the same level or ranking as respondents Hannah Kim, Kathleen Fox, and Rudolph Petris.

(B) The District did not receive any other challenges to the application of the tie-breaking criteria to those respondents who are elementary classroom teachers and share the seniority date of August 31, 2005. After applying the tiebreaking criteria, the District determined that nine respondents, who are elementary school teachers and share the seniority date of August 31, 2005, have to be brought back to teach next school year. The District thereupon moved to dismiss the Accusation against the following nine respondents who have the seniority date of August 31, 2005: Kathleen Escaleras-Morillo, Catherine Vito Maxfield, Allison Demonte Verde, Hannah Kim, Kathleen Fox, Rudolph Petris, Emily Hancock, Theresa Benveniste, and Sonya Lee.

15. Respondent Kimberly Barr is a certificated employee of the District who teaches language arts at Parks Junior High School and was served with a preliminary notice and Accusation as part of the reduction of language arts teachers by 2.0 FTE. Barr has a seniority date of August 28, 2007, along with fellow language arts teachers and respondents Anthony Wilson and Ruben Reed, who teach at Nicolas Junior High School and Beechwood Elementary School, respectively. During the hearing, the District determined that Barr has an additional certificate under criteria 5a of the tie-breaking criteria and, upon re-application of said criteria, is entitled to move to the top of the inverse order of termination among these three certificated employees in language arts who all have the same seniority date.

16. (A) Respondent Leslie Corsini is a certificated employee of the District with a first date of paid service of August 31, 1999. She has a clear single subject credential in home economics and was issued a limited assignment teaching permit or authorization in health science that is effective for one year and expires on January 1, 2011. Earlier, on or before January 1, 2010, Corsini received the limited assignment single subject teaching permit to teach health science after the District submitted a certificate of necessity showing that her services were needed to teach health science. While she was first scheduled to teach four sections of health science, Corsini actually teaches one section of health science pursuant to her limited assignment permit and four sections of home economics under her single subject credential at Nicholas Junior High School. Corsini was served with a notice and Accusation as part of the District's reduction of home economic teachers by 3.0 FTE.

(B) In this proceeding, Corsini contends that she should be able to bump junior high school health science teacher Marlon Barcelona, who is junior to her in seniority with the District. Corsini asserts that her permit to teach health science is valid until the end of the calendar year and that, on March 12, 2010, she took the state examination for renewal of the permit or issuance of a health science credential. She also asserts that she took courses in health science when she was completing her degree in family and consumer science at California State University Long Beach and the requirements for her credential, including courses in nutrition and individual and family health and development.

(C) However, unlike Barcelona who holds a clear single subject credential in health science, it was not established that respondent Corsini is credentialed to teach health science. She holds only a limited assignment single subject teaching permit in health science, which expires on January 1, 2011, and has not been renewed by the District. As set

forth on the permit (Exh. A), in order to renew this permit, Corsini must not only complete at least six semester units of coursework applicable to the credential or pass two sections of all examinations appropriate to the permit but also she must re-apply for the permit through her employer, the District. The regulations provide that a teacher must submit an application for renewal to the Commission on Teacher Credentialing and the employing district must also submit a declaration of need. Here, Corsini did not demonstrate that she has completed the six semester units of coursework and she has not passed the two sections of the examination. She will not know the results of her examination until later in this spring semester. As such, Corsini cannot be considered credentialed or qualified to teach health science. Moreover, Corsini did not demonstrate that the District has a need for an additional health science teacher next year. As established by the testimony of the Assistant Superintendent for Personnel Services, the District does not plan to renew Corsini's permit and it would not be reasonable to require the District to create a half-year assignment for Corsini so that she can teach health. The evidence aptly demonstrated that, as of March 15, 2010, Corsini was not credentialed to teach health and the District may rely upon her lack of a health science credential to terminate her employment in her credentialed and service area of home economics. (See *Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 814-815.)

17. (A) Respondent David DeGrazia is a certificated employee of the District and a third grade teacher at Woodcrest Elementary School. He has a clear multiple subject credential. According to the District's seniority list, DeGrazia's date of first paid service is August 29, 2006. However, he contends that his seniority date should be no later than July 24, 2006, because he taught algebra to fifth graders in a summer enrichment program called the "Summer Algebra Readiness Lab School" program which was held at the District's Ladera Vista Junior High School. He was paid approximately \$1,400 for teaching in the three-week summer program and received a certificate of participation.

(B) In or about July 2006, DeGrazia accepted the District's offer of a teaching job at Golden Hill Elementary School that was to begin at the start of the fall 2006 semester. The principal at the elementary school recommended that he teach in the summer program and DeGrazia participated in the program from July 24 through August 10, 2006. It was not established, however, that DeGrazia's participation in the summer program was mandatory or a condition of his hiring or employment. Nor was it established that the District considered or treated DeGrazia's participation in the summer program to have been his first date of paid service. Because it was not shown that the District's determination of his seniority date is erroneous or should be changed, respondent DeGrazia's seniority date will remain August 29, 2006, and he may be terminated pursuant to the District's reduction of elementary teachers.

18. Respondent Shalimar Licon is a fourth grade teacher at Richman Elementary School and holds a clear multiple subject credential. Licon has a date of first paid service with the District of August 29, 2006, which she shares with a number of other certificated employees. In this proceeding, Licon takes issue with the District's application of tie-breaking criteria no. 5(a)(v), which provides that persons currently holding a "CTAP II Certificate" are entitled to "greater seniority than employee[s] holding an item lower on the

ranked list.” Licona asserts that she should receive seniority credit under this tie-breaking criteria because she has completed a course or courses in educational technology for the classroom at the UCLA Extension program as well as other technology classes in order to receive her credential. Licona’s argument is not persuasive. The District’s formulation of the criteria for breaking ties in seniority among certificated employees with the same date of first paid service was reasonable, the result of the sound exercise of its discretion, and related to the welfare of the District and its pupils. Here, the tie-breaking criteria in question specifically requires that a certificated employee currently hold a “CTAP (California Technology Assistance Project) II Certificate” and Licona does not hold such certificate. It was not shown that the District’s application of the tie-breaking criteria was erroneous or arbitrary and capricious. Licona is not entitled to receive additional credit or ranking for purposes of seniority under this tie-breaking criteria.

19. (A) Respondent Patricia Miller is a fifth grade teacher at Richman Elementary School and holds a multiple subject credential. She has a date of first paid service with the District of August 29, 2006, but claims that her seniority date should be changed to on or about July 3, 2006, because she was required by her site principal to work and participate in a Grade Level Professional Development (GLPD) program. For an undetermined number of hours that summer, Miller and other teachers worked with and received training from District consultant(s) and were paid for their participation or work in the GLPD program. However, it was not established by probative evidence, such as direct evidence from a site principal or District administrator, that Miller’s participation in the summer 2006 GLPD program was mandatory or a condition of her employment with the District in the fall 2006 semester. Nor was it shown that the Miller’s status as probationary or permanent employee started when she began her participation in the GLPD program. As such, Miller’s seniority date should remain as determined by the District.

(B) Respondent Patricia Miller also contends that she should have higher ranking among those certificated employees with the same seniority date of August 29, 2006, based upon application of two tiebreaking criteria. First, Miller contends that she should receive tie-breaking credit under criteria no. 5(a)(v) because she completed a course in advanced technology in education at California State University Fullerton in the spring of 2006 in fulfilling requirements for her credential. Miller argues that her university coursework and/or the courses that she completed to earn her clear multiple subject credential are the same as the requirements for obtaining a CTAP II certificate. Like respondent Licona, however, Miller’s argument is not persuasive, for the District’s criteria requires that she currently hold a CTAP II certificate to earn tiebreaking credit or ranking and Miller does not hold such certificate. Further, the evidence did not establish that the coursework Miller completed for her credential was or is similar to what is required to obtain a CTAP II certificate.

(C) Second, Miller asserts that she should receive tiebreaking credit under criteria no. 5(a)(ix) for having been a teacher in a Program Improvement school. In her first year of employment with the District, which was during the 2006-2007 school year, Miller taught at Richman Elementary School. At that time, her elementary school was participating

in the Program Improvement program. However, Miller's school is currently not participating in or considered a Program Improvement school for the 2009-2010 school year. Because criteria 5(a)(ix) provides for tiebreaking credit if the certificated employee is "currently assigned" as a teacher in a Program Improvement level 3-5 school and Miller's school is not a Program Improvement school, her argument for additional tiebreaking credit or ranking under this criteria must also fail. It was not shown that the District's application of the tie-breaking criteria was erroneous or arbitrary and capricious with respect to Miller. Miller is not entitled to receive higher ranking among teachers with her same seniority date under these two tie-breaking criteria. Respondent Miller may be laid off pursuant to the reduction or discontinuance of elementary teachers.

20. (A) The District may take action against any certificated employee, who was duly served with a preliminary notice of layoff but then did not request a hearing, pursuant to Education Code sections 44944 and 44955.

(B) The District may likewise take action against any respondent, who was duly served with a preliminary notice of layoff and an accusation but then did not file a notice of defense or make an appearance at the hearing after filing a notice of defense, pursuant to Government Code section 11520, subdivision (a), and Education Code sections 44944 and 44955.

21. It was not established there are any certificated employees with less seniority than respondents who are being retained by the District to provide services that respondents are certificated and competent to render.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 21 above. All notices, accusations, and other related papers and reports required by these Education Code sections have been provided in a timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce by 88.5 full-time equivalent positions the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth

in Findings 1 – 21 above. With respect to those respondents whose may be laid off by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusations relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of respondents Kathleen Escaleras-Morillo, Catherine Vito Maxfield, Allison Demonte Verde, Hannah Kim, Kathleen Fox, Rudolph Petris, Emily Hancock, Theresa Benveniste, and Sonya Lee due to the reduction or discontinuance of particular kinds of services inasmuch as the District withdrew or dismissed the Accusation against them, based on Finding 14 above.

4. Based on Findings 1 – 21 above, there is no certificated probationary or permanent employee with less seniority than any one of respondents or the certificated employees who is being retained by the District for the 2010-2011 school year to render services which any one of respondents or certificated employees is certificated and competent to render.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued against respondents Kathleen Escaleras-Morillo, Catherine Vito Maxfield, Allison Demonte Verde, Hannah Kim, Kathleen Fox, Rudolph Petris, Emily Hancock, Theresa Benveniste, and Sonya Lee must be dismissed, based on Conclusion of Law 3 above, respectively. These respondents may not be given notice that their services will not be required for the 2010-2011 school year.

2. The Accusation issued against all of the remaining respondents is sustained, based on Conclusions of Law 1, 2, and 4 above. The District may give notice to these respondents, and each of them, in the inverse order of seniority that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3. The District may give notice to any respondents and certificated employees, who were served with notices and/or accusations that their services will not be needed next year but did not file requests for hearing or did not appear at the hearing, that their services

will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

4. Before giving notice to respondents, the District shall further determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when respondents should be terminated before the ensuing 2010-2011 school year.

Dated: May 5, 2010

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings